

# Employment Of Noncitizens in Postdoc Positions

Agricultural Research Service  
Human Resources Division

# Clearance/Tracking of Noncitizen Employees

- ARS Homeland Security (ARSHS) has the lead role in USDA for maintaining information on noncitizen employees and workers.
- Clearance must be received from ARSHS **prior** to visa sponsorship or employment of a noncitizen.

# Introduction

- The Federal Government gives strong priority to hiring U.S. citizens.
- Certain noncitizens may be hired in our postdoctoral positions,
- These noncitizens **MUST** be from a country on the “approved” list **and**
- These noncitizens must have a visa or document that allows employment in the U.S.

# Primary Questions for Employment of Noncitizens

- The first question of any noncitizen is what is their country of citizenship.
- The second question is does the noncitizen have a visa or document that allows employment in the U.S.

# Question 1. What is the person's country of citizenship?

- Noncitizens that can be hired must be a citizen from a country on the “approved” list.
- These countries are nations that have treaties with the United States; or are other nations or individuals specifically authorized by Congress.

# Answer to Question 1:

- If the noncitizen's country is not on the “approved” list, they may NOT be considered for employment.
- This is based on appropriations act restrictions.
- Stop now if the noncitizen is not from a country on the “approved” list!!!

## Question 2: Does the noncitizen currently possess a document that authorizes employment?

- Only noncitizens who are authorized to work in the United States may be employed.
- Typically, the noncitizen has a document issued by the U.S. Citizenship and Immigration Services (USCIS)

# Answers to 2. Documents that Noncitizens possess that allow employment

- **Permanent resident card** (aka green card), I-551
- **Employment Authorization Document (EAD)**
  - check for expiration date. Typically, F-1 students apply for an EAD to obtain practical training following completion of their studies. The EAD typically authorizes employment for 1 year or less. An H-1B must be obtained for a longer period of employment.

# Answers to 2. Documents that noncitizens possess that allow employment

- **CERTAIN** J-1 visa holders.

These certain J-1 student visa holders are those graduating from U.S. universities with a doctoral degree **and** whose university responsible officer approves the employment for “practical training” in writing. Other J-1s may not be employed.

# More on Certain J-1s

- These J-1s students who are graduating from a U.S. university can be employed for 18 month periods.
- A maximum of 36 months is allowed which includes any prior academic training as an exchange visitor.
- The academic dean or advisor and the local responsible officer (for the J-1 program) must approve the employment of the J-1 in writing.

# Question 3. If the Noncitizen does not come to us as “employment eligible,” is the Agency willing to sponsor an employment-based visa?

- Federal agencies may sponsor employment based, nonimmigrant visas.
- USCIS issues these visas to the petitioner (the employer).
- These visas are employer-specific.

# Two main types of employer-sponsored work visas

- TN Visas -- The TN visa is normally issued to citizens of **Canada** in a professional position.
- H-1B Visas – The H-1 B visa is appropriate for specialty occupations if the noncitizen is from a country other than Canada

# TN visas

- TN Visas are normally issued to citizens of **Canada** to be employed in a professional position as a result of the North American Free Trade Agreement.
- TN visas for Canadians are issued in increments of one year. After the noncitizen's name trace has been completed, they are easily obtained and renewed. With our formal offer of employment, the noncitizen can obtain the TN visa at a border crossing.

# H-1B Visas

- H-1B visas are typically used for specialty occupations requiring advanced education.
- H-1B visas are typically obtained in 2-year increments and are employer-specific.
- Government organizations are not subject to the yearly numerical limitation or cap.

# H-1B Visas

- After the noncitizen's name trace has been completed, H-1B visas can take 3-4 months to obtain. The basic filing fee is \$320.
- Expedited processing costs an additional \$1,000 and visas are processed within 15 calendar days.

## **Steps for filing for an H-1B visa.**

Step 1. State Labor Certification\*

Step 2. U.S. Department of Labor Certification\*

Step 3. Filing with USCIS

\*These steps can be done while waiting for the name trace results.

# Summary

- The Federal government gives strong preference to hiring U.S. citizens.
- All noncitizens who work in our facilities must be cleared through ARSHS.
- Noncitizens may only be employed in a postdoc if they are a citizen from a country on the “approved” list **and if** they have a visa or other document that allows employment in the U.S.

# References

- Information on Employment of Non-citizens in Non-Permanent Positions in the Excepted Service can be found on the ARS-HRD website at <http://www.afm.ars.usda.gov/hrd/jobs/visa/visacurrentdoc.pdf>.
- OPM Website, [www.opm.gov](http://www.opm.gov)
- USCIS website, [www.uscis.gov](http://www.uscis.gov)

# Questions?

- Contact your servicing Human Resources Specialist for employment questions.
- Contact ARSHS for information on noncitizen clearance procedures and questions on name trace requests.